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Article 27 (Assistance in the collection of taxes) and its Commentary*

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I. Article 27

"Article 27

"Assistance in the collection of taxes[1]

"1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this article.

"2. The term 'revenue claim' as used in this article means an amount owed in respect of taxes covered by this Convention as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

"3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

"4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

"5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

"6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

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[1] In some countries, national law, policy or administrative considerations may not allow or justify the type of assistance envisaged under this article or may require that this type of assistance be restricted, e.g. to countries that have similar tax systems or tax administrations or as to the taxes covered. For that reason, the article should only be included in the Convention where each State concludes that, based on the factors described in paragraph 1 of the Commentary on the article, they can agree to provide assistance in the collection of taxes levied by the other State.

"7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

"(a) In the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

"(b) In the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

"8. In no case shall the provisions of this article be construed so as to impose on a Contracting State the obligation:

"(a) To carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

"(b) To carry out measures which would be contrary to public policy (ordre public);

"(c) To provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

"(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State."

II. Commentary on article 27 concerning assistance in the collection of taxes

A. General considerations

1. This article provides the rules under which contracting States[2] may agree to provide each other assistance in the collection of taxes. In some States, national law or policy may prevent this form of assistance or set limitations to it. Moreover, in some cases, administrative considerations may not justify providing assistance in the collection of taxes to another State or may similarly limit it. During the negotiations, each contracting State will therefore need to decide whether and to what extent assistance should be given to the other State based on various factors, including

[2] Throughout this Commentary on article 27, the State making a request for assistance is referred to as the "requesting State", while the State from which assistance is requested is referred to as the "requested State".

- The stance taken in national law to providing assistance in the collection of other States' taxes
- Whether and to what extent the tax systems, tax administrations and legal standards of the two States are similar, particularly as concerns the protection of fundamental taxpayers' rights (inter alia, timely and adequate notice of claims against the taxpayer, the right to confidentiality of taxpayer information, the right to appeal, the right to be heard and present arguments and evidence, the right to be assisted by a counsel of the taxpayer's choice and the right to a fair trial)
- Whether assistance in the collection of taxes will provide balanced and reciprocal benefits to both States
- Whether each State's tax administration will be able to effectively provide such assistance
- Whether the cost of assistance is not too high for the requested State
- Whether trade and investment flows between the two States are sufficient to justify this form of assistance
- Whether for constitutional or other reasons the taxes to which the article applies should be limited.

The article should only be included in the Convention where each State concludes that, based on these factors, they can agree to provide assistance in the collection of taxes levied by the other State. Article 27 of this model being mainly similar to article 27 of the OECD model, most of the commentary of the latter model is reproduced below.

B. Commentary on the paragraphs of article 27

Paragraph 1

2. Paragraph 1 contains the principle that a contracting State is obliged to assist the other State in the collection of taxes owed to it, provided that the conditions of the article are met. Paragraphs 3 and 4 provide the two forms that this assistance will take.

3. The paragraph also provides that assistance under the article is not restricted by articles 1 and 2. Assistance must therefore be provided as regards a revenue claim owed to a contracting State by any person, whether or not a resident of a contracting State. Some contracting States may, however, wish to limit assistance to taxes owed by residents of either contracting State. Such States are free to restrict the scope of the article by omitting the reference to article 1 from the paragraph. Conversely, some contracting States may wish to cover taxes of any kind. In such a case, assistance under this article should not be limited by articles 1 and 2.

4. Paragraph 1 of article 26 applies to the exchange of information for purposes of the provisions of the Convention, that is, including article 27. The confidentiality of information exchanged for purposes of assistance in collection is thus ensured.

5. Finally, the paragraph provides that the competent authorities of the contracting States may, by mutual agreement, decide the details of the practical application of the provisions of the article.

6. Such agreement should, in particular, deal with the documentation that should accompany a request made pursuant to paragraph 3 or 4. It is common practice to agree that a request for assistance will be accompanied by such documentation as is required by the law of the requested State, or has been agreed to by the competent authorities of the contracting States, and that is necessary to undertake, as the case may be, collection of the revenue claim or measures of conservancy. Such documentation may include, for example, a declaration that the revenue claim is enforceable and is owed by a person who cannot, under the law of the requesting State, prevent its collection, or an official copy of the instrument permitting enforcement in the requesting State. An official translation of the documentation in the language of the requested State should also be provided. It could also be agreed, where appropriate, that the instrument permitting enforcement in the requesting State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognized, supplemented or replaced, as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

7. The agreement should also deal with the issue of the costs that will be incurred by the requested State in satisfying a request made under paragraph 3 or 4. In general, the costs of collecting a revenue claim are charged to the debtor, but it is necessary to determine which State will bear costs that cannot be recovered from that person. The usual practice, in this respect, is to provide that in the absence of an agreement specific to a particular case, ordinary costs incurred by a State in providing assistance to the other State will not be reimbursed by that other State. Ordinary costs are those directly and normally related to the collection, that is, those expected in normal domestic collection proceedings. In the case of extraordinary costs, however, the practice is to provide that these will be borne by the requesting State, unless otherwise agreed bilaterally. Such costs would cover, for instance, costs incurred when a particular type of procedure has been used at the request of the other State, or supplementary costs of experts, interpreters, or translators. Most States also consider as extraordinary costs the costs of judicial and bankruptcy proceedings. The agreement should provide a definition of extraordinary costs and consultation between the contracting States should take place in any particular case where extraordinary costs are likely to be involved. It should also be agreed that, as soon as a contracting State anticipates that extraordinary costs may be incurred, it will inform the other contracting State and indicate the estimated amount of such costs so that the other State may decide whether such costs should be incurred. It is, of course, also possible for the contracting States to provide that costs will be allocated on a basis different from what is described above; this may be necessary, for instance, where a request for assistance in collection is suspended or withdrawn under paragraph 7 or where the issue of costs incurred in providing assistance in collection is already dealt with in another legal instrument applicable to these States. Finally, the agreement shall take into account the differences in the development of contracting States. It could therefore be agreed that all costs, including ordinary costs, will be borne by one State only. In such a case, the contracting States will have to agree on the costs. These could, for instance, be determined on the basis of a fixed amount.

8. In the agreement, the competent authorities may also deal with other practical issues such as:

- Whether there should be a limit of time after which a request for assistance could no longer be made as regards a particular revenue claim
- What should be the applicable exchange rate when a revenue claim is collected in a currency that differs from the one which is used in the requesting State
- How should any amount collected pursuant to a request under paragraph 3 be remitted to the requesting State
- Whether there should be a minimum threshold below which assistance will not be provided.

Paragraph 2

9. Paragraph 2 defines the term "revenue claim" for the purposes of the article. The definition applies to any amount owed in respect of taxes covered by the Convention. It also applies to the interest, administrative penalties and costs of collection or conservancy that are related to such an amount.

10. Some contracting States may prefer to extend the application of the article to all taxes. States wishing to do so should replace paragraphs 1 and 2 by the following:

> "1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by articles 1 and 2. The competent authorities of the Contracting States may, by mutual agreement, settle the mode of application of this article.
>
> "2. The term 'revenue claim' as used in this article means any amount owed in respect of all taxes that are imposed on behalf of the Contracting States, or their political subdivisions or local authorities, but only insofar as the imposition of such taxes is not contrary to the Convention or other instrument in force between the Contracting States, together with interest, administrative penalties and costs of collection or conservancy related to such amount."

11. Similarly, some contracting States may wish to limit the scope of the article not to taxes covered by the Convention but to some types of taxes the list of which they would agree on, or to clarify the scope of application of these provisions by including in the definition a detailed list of the taxes. States wishing to do so are free to adopt bilaterally the following definition:

> "The term 'revenue claim' as used in this article means any amount owed in respect of the following taxes imposed by the Contracting States, together with interest, administrative penalties and costs of collection or conservancy related to such amount:
>
> "(a) (in State A): ...
>
> "(b) (in State B): ..."

If paragraph 2 is so worded, paragraph 1 should be worded according to the model proposed above in the present paragraph of the Commentary.

12. In order to make sure that the competent authorities can freely communicate information for the purposes of the article, contracting States should ensure that the article is drafted in a way that allows exchanges of information with respect to any tax to which this article applies.

13. Nothing in the Convention prevents the application of the provisions of the article to revenue claims that arise before the Convention enters into force, as long as assistance with respect to these claims is provided after the treaty has entered into force and the provisions of the article have become effective. Contracting States may find it useful, however, to clarify the extent to which the provisions of the article are applicable to such revenue claims, in particular when the provisions concerning the entry into force of their convention provide that the provisions of that convention will have effect with respect to taxes arising or levied from a certain time. States wishing to restrict the application of the article to claims arising after the Convention enters into force are also free to do so in the course of bilateral negotiations.

Paragraph 3

14. Paragraph 3 stipulates the conditions under which a request for assistance in collection can be made. The revenue claim has to be enforceable under the law of the requesting State and be owed by a person who, at that time, cannot, under the law of that State, prevent its collection. This will be the case where the requesting State has the right, under its internal law, to collect the revenue claim and the person owing the amount has no administrative or judicial rights to prevent such collection.

15. In many States, a revenue claim can be collected even though there is still a right to appeal to an administrative body or a court as regards the validity or the amount of the claim. If, however, the internal law of the requested State does not allow it to collect its own revenue claims when appeals are still pending, the paragraph does not authorize it to do so in the case of revenue claims of the other State in respect of which such appeal rights still exist even if this does not prevent collection in that other State. Indeed, the phrase "collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State" has the effect of making that requested State's internal law restriction applicable to the collection of the revenue claim of the other State.

16. Paragraph 3 also regulates the way in which the revenue claim of the requesting State is to be collected by the requested State. Except with respect to time limits and priority (see the Commentary on para. 5), the requested State is obliged to collect the revenue claim of the requesting State as though it were the requested State's own revenue claim even if, at the time, it has no need to undertake collection actions related to that taxpayer for its own purposes. As already mentioned, the phrase "in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes" has the effect of limiting collection assistance to claims with respect to which no further appeal rights exist if, under the requested State's internal law, collection of that State's own revenue claims are not permitted as long as such rights still exist.

17. It is possible that the request may concern a tax that does not exist in the requested State. The requesting State shall indicate, where appropriate, the nature of the revenue claim, the components of the revenue claim, the date of expiry of the

claim and the assets from which the revenue claim may be recovered. The requested State will then follow the procedure applicable to a claim for a tax of its own which is similar to that of the requesting State or any other appropriate procedure if no similar tax exists.

Paragraph 4

18. In order to safeguard the collection rights of a contracting State, paragraph 4 enables it to request the other State to take measures of conservancy even where it cannot yet ask for assistance in collection, for example, when the revenue claim is not yet enforceable or when the debtor still has the right to prevent its collection. Paragraph 4 should only be included in conventions between States that are able to take measures of conservancy under their own laws. Moreover, States that consider that it is not appropriate to take measures of conservancy in respect of taxes owed to another State may decide not to include the paragraph in their conventions or to restrict its scope. In some States, measures of conservancy are referred to as "interim measures" and such States are free to add these words to the paragraph to clarify its scope in relation to their own terminology.

19. One example of measures to which the paragraph applies is the seizure or the freezing of assets before final judgement to guarantee that these assets will still be available when collection can subsequently take place. The conditions required for the taking of measures of conservancy may vary from one State to another but in all cases the amount of the revenue claim should be determined beforehand, if only provisionally or partially. A request for measures of conservancy as regards a particular revenue claim cannot be made unless the requesting State can itself take such measures with respect to that claim (see the Commentary on para. 8).

20. In making a request for measures of conservancy, the requesting State should indicate in each case what stage in the process of assessment or collection has been reached. The requested State will then have to consider whether in such a case its own laws and administrative practice permit it to take measures of conservancy.

Paragraph 5

21. Paragraph 5 first provides that the time limits of the requested State, that is, time limitations beyond which a revenue claim cannot be enforced or collected, shall not apply to a revenue claim in respect of which the other State has made a request under paragraph 3 or 4. Since paragraph 3 refers to revenue claims that are enforceable in the requesting State and paragraph 4 to revenue claims in respect of which the requesting State can take measures of conservancy, it follows that it is the time limits of the requesting State that are solely applicable.

22. Thus, as long as a revenue claim can still be enforced or collected (para. 3) or give rise to measures of conservancy (para. 4) in the requesting State, no objection based on the time limits provided under the laws of the requested State may be made to the application of paragraph 3 or 4 to that revenue claim. States which cannot agree to disregard their own domestic time limits should amend paragraph 5 accordingly.

23. The contracting States may agree that after a certain period of time the obligation to assist in the collection of the revenue claim no longer exists. The period should run from the date of the original instrument permitting enforcement.

Legislation in some States requires renewal of the enforcement instrument, in which case the first instrument is the one that counts for purposes of calculating the time period after which the obligation to provide assistance ends.

24. Paragraph 5 also provides that the rules of both the requested (first sentence) and requesting (second sentence) States giving their own revenue claims priority over the claims of other creditors shall not apply to a revenue claim in respect of which a request has been made under paragraph 3 or 4. Such rules are often included in domestic laws to ensure that tax authorities can collect taxes to the fullest possible extent.

25. The rule according to which the priority rules of the requested State do not apply to a revenue claim of the other State in respect of which a request for assistance has been made applies even if the requested State must generally treat that claim as its own revenue claim pursuant to paragraphs 3 and 4. States wishing to provide that revenue claims of the other State should have the same priority as is applicable to their own revenue claims are free to amend the paragraph by deleting the words "or accorded any priority" in the first sentence.

Paragraph 6

26. Paragraph 6 ensures that any legal or administrative objection concerning the existence, validity or the amount of a revenue claim of the requesting State shall not be dealt with by the requested State's courts and administrative bodies. Thus, no legal or administrative proceedings, such as a request for judicial review, shall be undertaken in the requested State with respect to these matters. The main purpose of this rule is to prevent administrative or judicial bodies of the requested State from being asked to decide matters which concern whether an amount, or part thereof, is owed under the internal law of the other State. Any actions contesting the recovery measures taken by the requested State can of course be brought before the competent judicial authorities of that State. States in which the paragraph may raise constitutional or legal difficulties may amend or omit it in the course of bilateral negotiations.

Paragraph 7

27. Paragraph 7 provides that if, after a request has been made under paragraph 3 or 4, the conditions that applied when such request was made cease to apply (e.g. a revenue claim ceases to be enforceable in the requesting State), the State that made the request must promptly notify the other State of this change of situation. Following the receipt of such a notice, the requested State has the option to ask the requesting State either to suspend or withdraw the request. If the request is suspended, the suspension should apply until such time as the State that made the request informs the other State that the conditions necessary for making a request as regards the relevant revenue claim are again satisfied or that it withdraws its request.

Paragraph 8

28. Paragraph 8 contains certain limitations to the obligations imposed on the State which receives a request for assistance.

29. The requested State is at liberty to refuse to provide assistance in the cases referred to in the paragraph. However, if it does provide assistance in these cases, it remains within the framework of the article and it cannot be objected that this State has failed to observe the provisions of the article.

30. In the first place, the paragraph contains the clarification that a contracting State is not bound to go beyond its own internal laws and administrative practice or those of the other State in fulfilling its obligations under the article. Thus, if the requesting State has no domestic power to take measures of conservancy, the requested State could decline to take such measures on behalf of the requesting State. Similarly, if the seizure of assets to satisfy a revenue claim is not permitted in the requested State, that State is not obliged to seize assets when providing assistance in collection under the provisions of the article. However, types of administrative measures authorized for the purpose of the requested State's tax must be utilized, even though invoked solely to provide assistance in the collection of taxes owed to the requesting State.

31. Paragraph 5 of the article provides that a contracting State's time limits will not apply to a revenue claim in respect of which the other State has requested assistance. Subparagraph (a) is not intended to defeat that principle. Providing assistance with respect to a revenue claim after the requested State's time limits have expired will not therefore be considered to be at variance with the laws and administrative practice of that or of the other contracting State in cases where the time limits applicable to that claim have not expired in the requesting State.

32. Subparagraph (b) includes a limitation to carrying out measures contrary to public policy (ordre public). As is the case under article 26 (see para. 19 of the Commentary on article 26), it has been felt necessary to prescribe a limitation with regard to assistance which may affect the vital interests of the State itself.

33. Under subparagraph (c), a contracting State is not obliged to satisfy the request if the other State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice.

34. Finally, under subparagraph (d), the requested State may also reject the request for practical considerations, for instance if the costs that it would incur in collecting a revenue claim of the requesting State would exceed the amount of the revenue claim.

35. Some States may wish to add to the paragraph a further limitation, already found in the joint Council of Europe-Organization for Economic Cooperation and Development multilateral Convention on Mutual Administrative Assistance in Tax Matters, which would allow a State not to provide assistance if it considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.